IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 14283 of 2004

Between:

Mogili Subba Rao, S/o. Venkata Subbaiah,
R/o. Boggarapuvari Street, Markapur (M), Prakasam District.

..... PETITIONER

AND

1 The Joint Collector, Prakasam District at Ongole.
2 The Revenue Divisional Officer, Markapur, Prakasam District.
3 The Mandal Revenue Officer, Markapur(M), Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the order of the 1st respondent in Rc CS2/22746/2004, Dt. 8-8-2004 thereby rejecting petitioner's stay petition against operation of order of 2nd respondent issued in Rc H/1403/2004, Dt 31-7-2004 is illegal, irregular and violative of Art: 14, 19 and 21 of the Constitution of India and A P Schedule Commodities (Regulation of Distribution by Card System) order 2001 and quash the same and consequently direct the respondents to continue him as fair price shop dealer for shop No.19 of Markapur town, Prakasam District pending disposal of the appeal on the file of 1st respondent in the interests of Justice.

Counsel for the Petitioner: MR.SATYANARAYANA NIMMAGADDA

Counsel for the Respondents : GP FOR CIVIL SUPPLIES

The Court made the following :

THE HONOURABLE MS.JUSTICE G.ROHINI

WRIT PETITION NO.14283 OF 2004

ORDER:

The petitioner is a fair price shop dealer in respect of Shop No.19 of Markapur town of Prakasham District. His autorisation was suspended vide proceedings of the Revenue Divisional Officer, Markapuram dated 31.7.2004 pending enquiry into alleged irregularities in distribution of essential commodities to the card holders. Against the said order dated 31.7.2004, the petitioner preferred an appeal before the first respondent Joint Collector, Prakasham District. The first respondent while entertaining the appeal, by order dated 08.8.2004 refused to grant stay of the operation of the order of suspension. Aggrieved by the same, this writ petition is filed.

I have heard the learned counsel for the petitioner and the learned Government Pleader for Respondents.

The learned counsel for the petitioner contends that the order of suspension dated 31-07-2004 which is the subject of appeal before the 1st respondent, having been passed without affording any opportunity to the petitioner to explain the allegations is arbitrary and illegal. The learned counsel contends that having regard to the facts and circumstances of the case and particularly in view of the fact that the allegations are trivial in nature, the 1st respondent ought to have granted the stay till

the disposal of the Statutory Appeal.

On a perusal of the order of suspension, dated 31-07-2004 passed by the 2nd respondent, it appears that it was in the nature of a final order and the suspension was ordered as a substantive punishment without notice to the petitioner. Having entertained the Statutory Appeal, against such an Appeal the 1st respondent ought not to have rejected the application for stay mechanically without reference to anyone of the contentions raised by the petitioner and without assigning any reasons for rejecting the stay pending Appeal. Hence, the impugned order cannot be sustained. Having regard to the facts and circumstances of the case, I am of the view that a prima facie case is made out that the order of suspension is illegal and the balance of convenience is also in favour of the petitioner and therefore it would be appropriate to permit the petitioner to distribute the essential commodities till the disposal of the Statutory Appeal.

Accordingly the impugned order dated 08.8.2004 is hereby set aside and the writ petition is disposed of with a direction to the first respondent – Joint Collector, Ongole, Prakasam District to dispose of the main appeal pending on his file as expeditiously as possible, preferably within a period of four weeks from the date of receipt of this order. It is made clear that till the disposal of the appeal, the order of suspension passed by the 2nd respondent – Revenue Divisional Officer, Markapuram of Prakasam District dated 31.7.2004 shall not be given effect to.

The writ petition is disposed of accordingly. No costs.

12.8.2004.

mdaa.

Copy to:

1 The Joint Collector, Prakasam District at Ongole.
2 The Revenue Divisional Officer, Markapur, Prakasam District.
3 The Mandal Revenue Officer, Markapur(M), Prakasam District.

4. Two C.Cs to G.P.for Civil Supplies, High Court of A.P., Hyderabad (OUT)

5. Two C.D.Copies.